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Buy American and Buy European: Barriers to Defense Procurement

Ms. Diane J. Frasier
Department of the Army

Faculty Research Advisor
Dr. Irene Kyriakopoulos

The Industrial College of the Armed Forces
National Defense University
Fort McNair, Washington, D.C. 20319-6000

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ABSTRACT

Passed in 1933, the Buy American Act serves as a way of protecting U.S. companies from foreign competition. In light of a global economy and the emergence of regional trading blocs, the United States must rethink this past policy and develop policies which insure the nation's defense but also promotes free trade.

Today the emphasis is on cutting defense costs in the absence of a major threat and refocusing our energies on our internal problems. The Cold War is over and our major opponent no longer exists. The rationale for justifying costly and advanced technological weapon systems has disappeared. Defense contractors who could once rely on major buys of their equipment and were assured of running their production lines near capacity are now conducting major downsizing of their operations resulting in the massive layoffs of their employees. Some companies see no future in defense and are electing to get out of this industry.

This change in philosophy demands more efficiency from the defense acquisition process, if we want to sustain a well equipped military. One improvement in this process should be the Department of Defense's strong endorsement of cooperative international relationships. We should abandon protectionism such as the Buy American Act and other restrictive regulations incorporated each Fiscal Year into Defense Authorization and Appropriation Acts. This paper will examine the harm protectionism does to our acquisition process.

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DISCLAIMER

EXECUTIVE SUMMARY

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This change in philosophy demands more efficiency from the defense acquisition process, if we want to sustain a well equipped military. One improvement in this process should be the Department of Defense's strong endorsement of cooperative international relationships. We should abandon protectionist such as the Buy American Act and other restrictive regulations incorporated each Fiscal Year into Defense Authorization and Appropriation Acts.

Protectionist policies in our defense acquisition process are damaging in several ways. First, protectionist policies

invite retaliation from other nations. We cannot hope to market our goods in foreign markets if we close our doors to foreign competitors. Second, working with our allies to develop new weapon systems can be more cost effective. By working with our allies the costs of cooperative research and development (R&D) are spread among the participating countries. Third, cooperative efforts will reduce duplicative R&D efforts among the allies. And fourth, cooperative international R&D could result in employing existing technology from one of our foreign partners. This would lead to earlier production and deployment of weapon systems.

Improved cooperative international relationships with our European allies, namely the European Community, has many benefits. We must reach out to the European Community and become true trading partners.

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BUY AMERICAN AND BUY EUROPEAN: BARRIERS TO THE DEFENSE PROCUREMENT

INTRODUCTION

On April 5, 1993 The New York Times headlines read "A Forbidden Fruit in Europe: Latin Bananas Face Hurdles". In earlier editions this same newspaper reported on "The Risky Allure of Strategic Trade", "U.S. Fights a European Trade Move", and "On Trade, U.S. Partners Say, President Shows Two Faces". The Times does not stand alone in capturing the news on trade. The Washington Post has mirrored The Times' coverage with articles on how the "U.S. Prepares to Turn Up Heat on Trade", "Clinton Dismisses EC [European Community] Trade War Fears" and "U.S. Says It Will Retaliate Against the EC". These are just a sampling of all that has been written or reported on this increasingly volatile issue.

Why is trading with our allies such a volatile issue? Why has President Clinton taken such an interest in trade issues -- conducting meetings with the Prime Minister from Japan and the European Community's President? The answers to these questions revert to Mr. Clinton's catch phrase during the 1992 Presidential campaign -- its the economy stupid. Trade can mean more jobs or the loss of jobs.

In the last decade the United States witnessed the booming economic rebirth of nations it helped rebuild after the devastation of World War II. During this time the U.S. was the uncontested dominant economic leader that manufactured and

marketed its goods throughout the world unchallenged.

Both war torn Europe and Japan were recipients of massive U.S. funds poured into these countries to restore their economies as part of a program to stabilize world security. Looking at the progress of these two growing financial giants and our world situation leaves no doubt that these post World War II programs worked. Now our news media reports on our growing trade deficit as a result of the economic boom of Japan and Europe. Is the U.S., the nation that rescued Europe not once, but twice, going to take a back seat to these two new economic giants? Complaints abound about other nations' subsidizing their industries making it nearly impossible for U.S. companies to remain competitive in this global market. Reporters and politicians question how our aging industries and "less trained" workforce can compete against the modernized plants and fully trained worker of Europe and Japan.

While our new administration grapples with these pressing trade issues, one area of this issue that warrants the defense community's attention is the Buy American Act (BAA) and its affect on our defense posture. We must question the status quo and ask what should our policy be? Can companies, now facing drastic cuts in the defense budget, match their foreign competitors? Should we protect our industries and make it impossible for the Europeans or Japanese to compete in this country?

As Europe 1992 and the European Community (EC) becomes a

reality, we must explore our present policy regarding defense procurement, a policy that poses barriers to "free trade". Supporters of past U.S. policy point to the shrinking defense industry. Their argument requires the government to award contracts to domestic companies. These contracts keep production lines open and defense companies in business. Without these defense companies, supporters argue, this nation will not be able to mobilize in times of national emergencies. Their policy also supports major weapon systems deals with our friends and allies. Sales of these systems abroad keep the production lines back home open. In other words, free trade, but only for U.S. companies.

On the other hand, there are people lobbying to open our market for defense items. They argue that if U.S. companies want to do business with the EC, they will face trade barriers created by the Europeans in reaction to the U.S.'s policies. To complement this argument, various Government reports point to instances when pooling our resources with our allies would benefit our defense posture, save funds by taking advantage of existing technology and equipment and improve our trading position in the world. The world would see us as willing trading partners.

Before fully exploring this issue there are three questions I must ask and answer in order to make my conclusion credible. First, do we think future confrontations will be fought with coalition forces? Second, do we want to have our defense companies, in order to keep their production lines open, selling

defense goods to the world -- what about defense weapon proliferation? Third, if we turn to our allies for some of our weapon systems do we run the risk of not being able to mobilize in times of emergencies?

My answers to these questions revolve around discussions and presentations given at the Industrial College of the Armed Forces (ICAF). Future confrontations will most likely involve coalitions -- the increased efforts made by the United Nations (UN) to resolve current conflicts should highlight the fact, that in world situations, rarely is one nation taking full responsibility. Since Operation Desert Shield/Storm, the U.S. military operations have been with the support of our allies and the UN.

The answer to the second question concerning defense proliferation must be no. We cannot base the future of our defense industry on supplying our allies with our modern weapons. Our National Security Strategy stresses the need to eliminate nuclear proliferation and to work on arms controls. Friends today may not be friends tomorrow -- do we want these nations using these weapons against our soldiers -- I think not.

Can we rely on our allies if we need to mobilize? The answer to this question is maybe. If my scenario of coalitions holds true, and our supplier is part of this coalition -- then the answer is yes. However, if the supplier is not part of the coalition, perhaps sympathetic to our opponent, or maybe even our opponent -- then the answer is probably not.

So, since we will be joining our allies in future military confrontations and we want to reduce armaments throughout the world, let us disavow protectionism and promote a defense acquisition policy promoting "free trade" and cooperative agreements between allies yet retain only the critical items necessary for the defense of our great nation.

In this paper I will discuss the Buy American Act -- the history of the legislation, what it says, how it is implemented and its relation to subsequent trade agreements. I will then turn to the European Community -- its history and problems we could face if we choose to close our markets. This paper concludes with the positive and negative aspects of opening our defense markets and relying more on cooperative international programs. I hope at its conclusion you will see that our present policy needs restructuring with less emphasis on self-reliance and protectionism and more encouragement for free trade.

BACKGROUND

Buy American Act Preference for American goods is nothing new. This emphasis to buy American dates back to 1844.[1] Today we find our acquisition process bound by a law passed during the deepest part of the Great Depression. The highest tariff rates in history occurred when Congress passed the Smoot-Hawley Tariff Act in 1930. This act was quickly followed by the Buy American Act (BAA).

"The socioeconomic objective behind both statutes was a desire to increase domestic employment and to raise the incomes of U.S. manufacturers by encouraging the use of domestic goods."[2]

Title III of the Act of March 3, 1933, otherwise known as the BAA, emphasizes the acquisition of services and supplies from the U.S.

"Notwithstanding any other provision of law, unless the head of the Federal agency concerned shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States and only such manufactured articles, materials and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, shall be acquired for public use."[3]

This prohibition on foreign goods applies only to materials and or services for domestic use. These prohibitions do not apply to materials and supplies for use outside of the U.S.

To further emphasize American products, the Department of Defense (DOD) added more teeth to the BAA. Now foreign goods would be faced with a 50 percent surcharge on their prices for evaluation purposes.

"In the 1960s however, under the aegis of

'Buy American', DOD further strengthened domestic source preferences by placing a 50 percent balance of payments price differential on foreign goods. Although established as an interim measure to stem the outflow of gold from the United States, the initiative has since provided the genesis for the DOD Balance of Payments Program. Originally intended to apply only to those products procured by the United States for use outside the country, the price differential has since expanded to include the procurement of all foreign goods which result in dollar being expended abroad."[4]

The Balance of Payments affects procurements for both domestic and foreign requirements. To enforce these restrictions in our public procurement sector, the Act has been incorporated into the Federal Acquisition Regulation (FAR) and the Defense FAR Supplement (DFARS). Since this paper focuses on defense acquisition, most of the acquisition rules and regulations cited will come from the DFARS. DFARS guides the Department of Defense (DOD) in all its acquisitions and in this situation, has preference over the FAR coverage.

"The Buy American Act provides for a price differential of either 6 or 12 percent to be applied to foreign source products. In contrast, DOD places a price

differential of 50 percent on such goods."[5]

To encourage the domestic use of U.S. supplies materials, products from other nations, when evaluated for price, must add a fifty percent surcharge and duty if applicable. The following example illustrates the evaluation process under the BAA.

Country B submits a proposal at $100 per unit. A U.S. company, realizing that this is an important project, scales down its costs and comes in with a unit price of $110. Country B appears to have outsmarted the U.S. company. Who wins? The U.S. firm -- why -- because Country B's price, after the Buy American factor is really $150. A fifty percent surcharge ($50) must be added to Country B's base price.

Rule of Origin -- BAA The BAA hinges on the term "domestic end products". To comply with the regulation a product must contain more than 50 percent U.S. components. In its 1990 report to Congress, the Office of Federal Procurement Policy (OFPP), cites Executive Order 10582, "Prescribing Uniform Procedures for Certain Determinations Under the Buy American Act" and its definition for foreign and domestic products. In a nutshell, the test for a foreign or domestic product rested on where the majority of that product's components originated.

> "Under the Executive Order, products are considered foreign if the cost of foreign components constitutes 50 percent or more of the cost of all the components used in such products. Thus to qualify as a domestic item under the BAA and the Executive Order, a product

must be manufactured in the United States and it must contain more than 50 percent domestic components."[6]

The world has changed a great deal since the passage of the BAA and Executive Order 10582. Today we have multi-national companies producing products overseas, other nations controll industries which play critical roles in our defense products and foreign companies manufacturing goods in the U.S. Is the rule of origin as defined in the BAA good for America?

The BAA only serves the advantage of U.S. companies manufacturing products or supplying services in the U.S. Under the BAA the majority of components in the U.S. company's product must be American. In today's world these are very strict requirements. Also, in today's world of the Trade Agreement Act of 1979 (TAA) and the General Agreement on Tariffs and Trade (GATT), the premise for the BAA may be obsolete.

> "Thus, while implementation of the Buy American Act does not necessarily result in an outright prohibition on acquisition of foreign products, foreign sources...are often placed at a major competitive disadvantage, both at the prime contract level and as suppliers of components."[7]

<u>Rule of Origin -- TAA</u> Today we have acknowledge that there is a global economy. "We do indeed live in a world economy... What happens to national income, prices and interest rates in one country affects other nations."[8] In 1944, recognizing that a concentrated effort would be needed to revive the economies of

many nations after World War II, leaders from the U.S., the United Kingdom and the other allies met in the New England state of New Hampshire and agreed to the Bretton Woods accords. The Bretton Woods accords established the gold-exchange system, the International Monetary Fund, the World Bank and the General Agreement on Tariffs and Trade.[9]

All of these institutions and agreements have fostered the importance of world trade. GATT has six principles to enhance trade. They are: (1) most favored nation status; (2) use of tariffs; (3) stabilizing trade; (4) promoting fair competition; (5) elimination of quotas and other barriers to foreign markets; and (6) waiver procedures for emergency situations. National security and government procurement was not to be part of the GATT. However, since these areas account for such a large portion of dollars spent by countries another agreement concentrating on these two areas was adopted. This additional agreement, the Agreement on Government Procurement, was adopted in 1979 by the U.S. as the TAA. Under the TAA, national security and government goods and services are now subject to "free trade". The same holds true for our European partners -- their national security and government programs are also open for foreign competition.

Just as the BAA has its definition for rule of origin, the TAA "uses a 'substantial transformation' method to determine country of origin."[10] The TAA has two methods of determining the country of origin. First, if an article was totally produced

or manufactured in that country, then that country is considered the country of origin. The second determination occurs when a product is made up of foreign goods. In this situation the product must have been substantially transformed, that is obviously turned into a distinctively different product in the claimed country of origin. The TAA classifies goods produced or substantially transformed in the U.S. regardless of the percentage of foreign components as a domestic good. This means that U.S. companies and foreign companies with facilities in the U.S. an have their products deemed domestic per the TAA definition.

VIABILITY OF THE BUY AMERICAN ACT

Is the BAA good for U.S. Business Today the acquisition of foreign goods is governed by a law passed during the depth of the Great Depression. During this time our national unemployment rates hit the 25 percent range. The purpose of the Act then was to protect American jobs. Does this scenario still apply? Are we not facing relatively high unemployment and a reduction in our standard of living as once well-paid but low-skilled jobs float across the border and the Atlantic and Pacific oceans?

The answers to these questions are yes -- but is the Buy American Act and protectionism serving its purpose? Critics argue that the BAA hurts both American products and workers. The OFPP Report to Congress focussed on problems with the rules of

origin as defined by the BAA and the TAA. "The way the products are designed, sourced, manufactured and assembled are vastly different now than they were in 1933."[11] In many instances the BAA 50 percent rule can exclude American products which do not pass the component test. "As a result the FAR excludes United States products that are substantially transformed in the United States within the meaning of the TAA but which do not satisfy the BAA's component test."[12] Contractors are required to certify that their goods and services comply with the BAA.

The 50 percent rule can and has hurt many U.S. products. Testifying before Congress, a representative from a Computer Industry Association related how a chip completely manufactured in the U.S. would fail the domestic origin test as outlined by the BAA. The example zeroes in on the fact that the component test does not account for the cost of labor. So a product with $90 in labor costs, $20 for U.S. computer boards and $30 for Japanese chips would be classified as a foreign product. A good deal of time and money is spent in research, development and testing items -- none of these steps are calculated into the BAA's component test.

Applicability of the BAA Drafters of the Act understood that there would be times when it would be advantageous to award a contract to a foreign concern. The DFARS regulation permits contracting officers, with approval of senior level management, to award a contract to a foreign company when and if it is in the "best interests of the country." In addition to this caveat, the

applicability of the BAA has been watered down by: (1) legislation limiting the production of specific items to domestic companies; (2) memorandums of understandings with our allies; (3) the TAA and the Caribbean Basin Economy Recovery Act; and (4) other efforts by Congress and DOD to sustain our industrial base and mobilization ability.

Congress has imposed language in several appropriation and authorization bills which prohibit contracts to foreign companies for items deemed invaluable for defense purposes. These restrictions completely forbid contract awards to foreign concerns for items such as food, clothing, fabrics and specialty metals as listed in DFARS 225.7002. Other items not open for foreign competition include: machine tools for Navy ships and submarines, construction and repair on ships and the building of buses[13].

The advisory panel looking at streamlining acquisition laws dedicated an entire appendix to these laws providing background and how the laws had been changed by FY to FY. One of the oldest restrictions concerns the transportation aboard U.S.vessels. The Cargo Preference Act dates back to 1904. On April 28, 1904 President Theodore Roosevelt signed this Act "requiring the employment of U.S. vessels for public purposes."[14] A few days after he took office, President Franklin Roosevelt signed a House Joint Resolution which required "Government financed exporting of products be shipped in U.S. vessels."[15] Two years later President Roosevelt signed the Merchant Marine Act of 1936 --

this required Government travel to be done on U.S. ships. This Act was amended five subsequent times -- each time adding a new requirement to use U.S. flag ships. The last amendment in 1985 delegated Presidential powers to the Secretary of Defense.

Another restricted area is R&D contracts. Public Law 92-570 prohibits awarding contracts to foreign concerns for research and development efforts on "any weapon system or other military equipment if there is a U.S. corporation..."[16] All things being equal, meaning price and technical competency, preference is given to domestic companies for research and development contracts. For R&D contracts, awards to foreign concerns can only take place when the domestic concern is either not the low offeror/bidder or technically competent.

Congressional restrictions have compounded the our trade problems and have made it impossible for EC companies to compete in areas deemed vital to the U.S defense. In several Appropriation Acts Congress has closed the market to all foreign offerors for these critical defense items. So while the U.S. awards numerous contracts to foreign concerns the EC cites these Congressional prohibitions to be barriers to trade. Congressional actions eliminate all foreign offers for these "critical" items.

The Buy American Act requires that a foreign firm to conquer the U.S.' 5 percent surcharge to qualify its costs. But this is not an complete picture for defense items and the EC. Under several memoranda of agreement, the Buy American Act is waived

for all NATO (North Atlantic Treaty Organization) countries. At this point in its evolution, all of the 12 EC member states participate in NATO. DFARS 225.872-1 provides the list of NATO countries where the Buy American Act/Balance of Payments is waived. In short, companies from EC member nations are not subject to the hefty 50 percent surcharge. Their proposals are treated equally with their domestic counterpart.

DFARS coverage also emphatically declares that we should not deal with countries not in good standing with the TAA nor with countries which have discriminated against our products. The Act also instructs Heads of Agencies to report discrimination of U.S. products in other countries to the U.S. Trade Representative.

The Buy American Act, along with other protectionist Congressional restrictions, impedes our ability to compete in a global economy. Although the BAA is waived for our European allies, the Act purports the U.S. as a closed market. Since 1933, the BAA has stood as the law of the land. The EC quickly points to the BAA as a barrier during trade discussions. The waiving procedure further adds to the inefficiencies of the outdated BAA. Time wasted during the process to waive the BAA unnecessarily increases the procurement acquisition lead time. The BAA conflicts with the TAA -- as stated earlier, the rule of origin in the BAA can be detrimental to U.S. firms as well as to foreign firms. Why keep a law that has outlived its purpose? And while the BAA can be waived because of Memorandums of Agreements, Congressional restrictions cannot. And Memorandums

of Agreements can be easily withdrawn. With these restrictions our allies are completely barred from competing.

EUROPEAN COMMUNITY

Background Preparations for an European Economic Community started after the Allied victory in World War II. In fact as early as 1944, Belgium, the Netherlands and Luxembourg formed the Benelux customs union. In 1951, Robert Schuman led the way for the bringing together two major European powers, who for most of the preceding century had waged wars on each other, France and Germany. This major event was the Treaty of Paris which established the European Coal and Steel Community. From 1951 we go to the Treaty of Rome in 1957, which, with the Treaty of Paris became the Constitution for the European Community. Note that Article 223 of the Treaty of Rome exempts defense. There would be no common market for defense -- each country was responsible for their military needs.

To reemphasize the economic strength of this emerging community, the White Paper in 1985 laid the groundwork for the Single European Act (SEA). This Act revised the Treaty of Rome and has arduously led to the removal of trade barriers among the 12 member states. There would only be one European Community to compete in the developing global market.

Knowing that the EC would be a prime candidate as a plum export market, the EC has warily watched the foreign competition. It is not in the EC's best interest to become a

dumping ground for foreign goods and services at the expense of EC firms and citizens of the EC member states. The EC developed to improve trade among the member states -- EC firms, not U.S. companies, should be the major beneficiary of this union. This feeling is evident in public procurement where the EC has stressed reciprocity in "free trade". As Gary Hufbauer states "More recently there have been some, on both sides of the Atlantic, who mean by reciprocity something akin to 'an eye for an eye'"[17]

The EC has carefully monitored the U.S. public acquisition system and the enforcement of the Buy American Act. So while the U.S. has the Buy American Act, the Europeans had proposed a very similar Act entitled the Buy European Act. While discouraging national favoritism, "Contracting entities shall ensure that there is no discrimination between different suppliers, contractors or service providers."[18] Domestic vendors were to be favored over foreign companies in public procurements by the addition of a three percent factor leveling factor, i.e. a U.S. item of $100 under the Buy European would be $103. Similar to the Buy American Act, the Buy European Act would also stress the responsibilities of the member states to notify the Commission of trade barriers encountered in other countries. Upon notification the Commission would begin negotiations to seek more favorable treatment with that country.

DEFENSE AND THE EC

Concerns of EC Nations. Unlike the United States with 50 states

coming together to form one military and defense posture, the EC is comprised of 12 very distinctive nations -- each with their own defense and military infrastructure. In some of the countries the defense companies are owned by the Government. For instance both France and Italy have a mixture of private and Government owned defense companies. And while Spain's defense industry is an extended arm of the Spanish government, the United Kingdom and Germany rely on private companies for their defense items.

None of these individual nations approaches the dollars spent by the U.S. in defense. In 1991, the United Kingdom spent approximately $30 billion for defense. The U.S. according to the French General Directorate for Armaments (DGA) spent $277 billion. The entire EC in 1991 spent $149.9 billion. Taken together the EC has 2.7 million people in their armed forces compared to 2.18 million in the U.S. Whereas the U.S. has 3 million people directly employed in defense industries, the EC only has .08 million, yet the EC exports 22 percent of its defense goods compared to the U.S.' 15 percent. Taken as one entity the EC represents a formidable presence.

The U.S. defense industry's interest in trading with the EC is evident by the increase in teaming arrangements with European companies. In three years from 1986 through 1989 the number of teaming arrangements increased from 6 to 33. Our defense companies continue to lobby politicians to permit sales of their goods and services to our overseas allies. Clearly trade

is in the best interests of our companies. Trade means dollars and in today's climate of declining defense budgets, selling goods and services to Europe may mean keeping a production line open and U.S. citizens employed. But how can we expect the EC to open their doors to us, if we do not do the same for them with our BAA policy and yearly Congressional restrictions?

BENEFITS OF TRADE IN THE DEFENSE INDUSTRY

Positive. Several reports from the General Accounting Office (GAO) and the DOD Inspector General (IG) present arguments for opening our defense market to our allies. In their October 1992 report on International Cooperative Research and Development, the DODIG lays out three valid reasons for sharing our defense dollars with our European allies. These same reasons probably account for the increase in cooperative arrangements between the EC nations. First, cooperative research and development (R&D) means spreading the costs among nations. This benefit ties into our efforts to decrease Government spending and hold down the budget deficit. Second, by working together, there is less of a chance of duplicating R&D efforts among the allies. And third, expanding the R&D effort to include EC companies may result in obtaining existing technology. Employing existing technology will lead to quicker production and deployment. In conjunction with early deployment, cooperation in R&D will mean "interoperable and standardized systems by allied members."[19]

In another report on the evaluations of foreign weapon systems, the DODIG concluded by not fully pursuing the cooperative nature of the program, the DOD had spent an extra $305 million. This may not seem like much, but their review was just a small sampling of our military programs. This report focused on the evaluation of foreign non-developmental items (NDI) as a means of satisfying U.S. defense requirements. While this program could lead to quicker fielding of weapon systems, better performance and reduced R&D dollars plus better commonality and interoperability -- DOD did not fully explore existing foreign weapon systems. And when it did -- it selected less important programs or programs where the benefits of employing the foreign weapon system would be negligible.

The Nunn Amendment, enacted in 1986, was to foster cooperative arrangements with our major allies. Under the amendment $250 million was initially allotted for NATO R&D and testing. Between Fiscal Years (FY) 1987-1991 the yearly funding averaged $112 million.

> "The audit projected that approximately 150 research and development programs, with an estimated program value of $93 billion, have the potential for allied cooperation...we estimated the potential benefits to be as much as $10 billion for FYs 1992 through 1997 if a fully-effective international cooperative research and development program was implemented throughout the Military Departments and Defense agencies."[20]

How can we close the trade doors on our allies when the Secretary of Defense has already stated:

> "The Department of Defense considers international defense industrial cooperation to be a significant element of the U.S. acquisition process. By taking advantage of the growing technological capabilities of our allies, we make more efficient use of scarce defense resources."[21]

Negative. I have mentioned earlier the drive to use protectionism to keep American jobs and the call to maintain a defense industry for emergency mobilization. While the second premise has merit, most economists do not see protectionism as a good way to keep jobs.

Protectionism may cause retaliation. In fact our fears about "Fortress Europe" could easily come to pass if more protectionist methods are employed. We must answer Gary Hufbauer's question, "to what extent will the European Community insist, as a condition for U.S. firms to operate freely in a unified Europe, that European firms be given the same rights in the United States?[22]

Back in 1972 it might have been easier to argue for protectionism. "It has traditionally been argued that the United States requires...a viable merchant marine in case of war and that these industries should be fostered by protectionist policies, even though they are less efficient than the foreign competition."[23] Today with the drive to trim Government

expenses -- do things more efficiently -- protectionism doesn't have a place. Are we any stronger today because of our "viable merchant marine"? No -- in fact the situation has only worsened -- protectionist policies did not sure up this important aspect of our national defense. In many cases protectionism is throwing good money after bad -- by encouraging businesses facing closure to stay open we are creating inefficiencies in our economy. Free trade permits nations to produce what they do best and then trade that commodity for other needed goods and services. Keeping a dying business open is harmful to the business and to the nation. That business is not producing at its best -- that business and the nation loses.

Emergency mobilization is a bitter argument for protectionism. There are certain critical industries which we should not lose. The report of streamlining acquisition laws recognizes that "certain technologies may be so critical that it is essential to national security for such products to be developed and acquired only from United States sources. The Secretary should have the authority to restrict acquisitions to United States sources and control the foreign ownership of key defense industry sectors to ensure this country's continuing military strengths."[24] The high level of concern about the recent takeover proposal from Thompson, a French company, for LTV illustrates the importance of this issue. But the most critical question about the critical technologies is which one? Are ships more critical than airplanes? We must be able to define and

identify these key technologies before slapping on more protectionist requirements. The EC is the U.S.' biggest export market.[25] Consulting firms throughout this country are encouraging companies to look to the EC as a new market for their goods and supplies. The Single European Market is quickly becoming a reality. How can the U.S. expect to participate openly in the EC market when their defense markets closed to the EC? It can't.

The U.S. must work to erase the fears concerning free trade. We know that with declining defense dollars many of our defense companies face extinction. The U.S. has coddled the defense industry for quite some time in part for national security reasons. Now we are protecting these same industries from foreign competition. Instead of only looking at our domestic markets, these companies should heed the advice of consulting firms and seek cooperative projects with the EC nations. We must encourage our defense companies to expand their narrow focus. "Many firms are reluctant to do any international sales on a direct commercial basis. If the sale cannot take the form of a FMS sale, the company is unable to address the financial, contractual, and legal issues required with internal talent."[26] Protectionism by the U.S. or the EC has no place in a global market.

SUMMARY

There is no doubt that the Buy American Act is outdated. Its rule of origin hurts American products as well as foreign goods and services. Our nation's emphasis on solely buying American is changing. Declining budgets and more military engagements as part of a coalition are good arguments for employing more cooperative international agreements. Cooperative international agreements promote the sharing of project costs with our allies. Working with our allies also enables us to take advantage of existing European technology -- this can lead to quicker development and fielding of weapon systems. These agreements can also reduce duplicative R&D efforts by the U.S. and our allies.

On the other hand mobilization is a major problem, so, the identification of critical technologies and guarding company ownership requirements are necessary. The French company, Thompson, bid to take over the U.S. defense contractor LTV, garnered a good deal of attention from both Congress and the White House. Claiming national security as a reason, Congress is considering an Act that places more scrutiny on foreign takeovers of U.S. firms -- defense contract awards would be prohibited to firms with over 50 percent U.S. ownership.

Change was a key word in the 1992 campaign -- it should be a major word in our acquisition process regarding trade and protectionism. We must eliminate the BAA and only protect the truly critical items for our national defense. The Government

and our defense contractors must acknowledge the global economy.

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1. Streamlining Defense Acquisition Laws: Report of the Acquisition Law Advisory Panel to the U.S. Congress, January 1993, Chapter 7, page 7-13.

2. Ibid, page 7-25/26.

3. Title III of the Act of March 3, 1933, Buy American Act, section 2.

4. Streamlining Defense Acquisition, page 7-26.

5. Ibid, page 7-26/27.

6. Report to Congress, Buy American Act, A Study of Alternatives to the Rule of Origin, December 1990, Office of Federal Procurement Policy, Office of Management and Budget, Executive Office of the President, page 3.

7. Streamlining Defense Acquisition Laws, page 7-27.

8. William J. Baumol and Alan S. Blinder, Economics, Principles and Policy, Harcourt Brace Jovanovich, Publishers, 1991, page 432.

9. Streamlining Defense Acquisition Laws, page 7-3.

10. Report to Congress, page iii.

11. Report to Congress, page 44.

12. Ibid, page 8.

13. DFARS 225.7007 calls for this restriction but allows the acquisition of foreign made buses when "needed for temporary use because buses in the United States are not available to satisfy requirements that cannot be postponed."

14. Streamlining Defense Acquisition Laws, page C-17.

15. Ibid, page C-17.

16. DFARS 225.7008 Restriction on research and development.

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26. "Global Competition: The Time is NOW!", K. Barry Marvel, May 1991 Contract Management, National Contract Management Association, page 9.